

BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR: 7159

Respondents: Trump Make America Great Again Committee, and Bradley T. Crate, as treasurer (collectively "MAGA") Donald J. Trump for President, and Bradley T. Crate, as treasurer¹ (collectively the "Committee") Republican National Committee and Anthony W. Parker, as treasurer (collectively the "RNC")

Complaint Receipt Date: October 20, 2016

Response Date: November 14, 2016

EPS Rating:

**Alleged Statutory/
Regulatory Violations:**

52 U.S.C. § 30120(a)(1), (c)
11 C.F.R. §§ 100.26; 100.27;
110.11(a)(1), (b)(1), (c)(1)-(2)

The Complainant alleges that he received a fundraising letter signed by Donald J. Trump that lacked an appropriate disclaimer. The mailer contained a two-page letter, a two-page contribution form, and a reply envelope. The contribution form included a proper disclaimer stating that MAGA, a joint fundraising committee composed of the Committee and the RNC, paid for it, but the letter did not contain any disclaimer. Respondents deny the allegation, arguing that the communication contained an appropriate disclaimer and joint fundraising notice.² They assert it is acceptable to display the required disclaimers on the final page of a multi-page communication.³

¹ At the time of the Complaint, Timothy Jost was treasurer of the Committee. Bradley T. Crate is the current treasurer of both MAGA and the Committee.

² See 11 C.F.R. §§ 102.17(c)(2), 110.11(a)(1), (b)(1).

³ The Response cites 11 C.F.R. § 110.11(c)(2)(iv): "[t]he disclaimer need not appear on the front or cover page of the communication as long as it appears within the communication, except on communications, such as billboards, that contain only a front face."

The Commission's regulations provide that a communication that would require a disclaimer if distributed separately, that is included in a package of materials, must contain the required disclaimer.⁴ Had the Committee's letter had been distributed separately, it would have required a disclaimer, as it is a public communication distributed by a political committee.⁵ However, under the circumstances of this particular case, including the existence of a compliant disclaimer on the two-page contribution form accompanying the two-page letter, it appears unlikely that the general public would have been misled as to who was responsible for the letter.

Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These criteria include (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating and the unlikelihood the general public would have been misled as to who was responsible for the letter, we recommend that the Commission dismiss the allegations consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency

⁴ See 11 C.F.R. § 110.11(c)(2)(v). In a factually similar case, MUR 6993 (Van Hollen for Senate), the Commission found that a letter enclosed in the same mailing with a separate contribution form needed its own disclaimer. However, the Commission dismissed the disclaimer violation because the contribution form contained a compliant disclaimer, and the public would not likely have been misled as to the responsible party. See Factual and Legal Analysis at 6, MUR 6993 (Van Hollen for Senate). In contrast, the Commission has advised that a single double-sided document containing both a solicitation and a check-off form was not separable, so a disclaimer did not need to appear on both pages of the document. Advisory Opinion 2011-10 (POET PAC) at 6-7. Here, like MUR 6963, the letter and the contribution form are separate documents included in the same package of materials, and, therefore, each requires a disclaimer.

⁵ 11 C.F.R. § 110.11(a)(1).

